IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..12..2007

Coram:

The Honourable Mr. Justice K.CHANDRU

W.P. No. 9332 of 2006
and
W.P.M.P.No.10331 of 2006

Tessy John .. Petitioner

vs.

1. The Principal Commissioner and
Commissioner of Land Reforms
Chepauk
Chennai - 5

2. The Assistant Commissioner /
Competent Authority
Urban Land Ceiling (Alandur)
Chennai - 88

3. The Tahsildar
Tambaram Taluk
Tambaram
Chennai .. Respondents

Petition under Art.226 of the Constitution of India, praying for a Writ of Certiorarified Manadamus by calling for the records of the respondents especially the order of the second respondent dated 01.6.1993 Na. Ka. 1248/92A under Section 9(5) and Notice dated 30.6.1994 vide Rc. 1245/92A under Section 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 relating to the land in Survey No. 56/16C of Perungudi Village measuring 1800 Sq. metres and quash the same and further direct the respondents to treat the proceedings referred to above as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, Act 20 of 1999 so as to enable the third respondent to correct the entry in the revenue records incorporating the name of the petitioner as owner of the above land.

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For Petitioner : Mr. V. Ramesh

For Respondents : Mrs. V. Bhavani Subbaroyan, AGP

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ORDER

I have heard the arguments of Mr. V. Ramesh, learned counsel appearing for the petitioner and Mrs. V. Bhavani Subbaroyan, learned Assistant Government Pleader, representing the respondents, and have perused the records.

2. The petitioner is the owner of the property in Survey No. 56/1A part of Perungudi Village measuring an extent of 44 cents. She had purchased the same as agricultural land by means of a registered sale deed dated 06.5.1981 from one Smt. U. Lakshmi. The petitioner was in possession and enjoyment of the said property. She also obtained patta in her name for the land in question and the Survey Number was re-numbered as 56/16C. Out of the total extent purchased by her, she sold an extent of 4 grounds to a third party and the remaining lands were in her possession. When she applied for a computerised copy of the patta, she was informed by the Village Administrative Officer that the land in Survey No. 56/1A Part had been acquired by the second respondent under the Tamil Nadu Act 24 of 1978. Thereafter, she approached the second respondent for certified copy of the order and accordingly, she got the same. She found that the entire extent of land in Survey Nos. 56/16B and 16C measuring an extent of 3350 Sq. Metres was acquired by the second respondent from one Mammen Varghese of Kottayam in Kerala. It is this order that is challenged in this writ petition.

3. The petitioner also asserts that in the four grounds, which was sold to a third party, a house construction has been put up and people are residing in the said land. She also states that possession was never taken from her and she continues to be in possession and enjoyment of the property. Further, she states that in the light of the Tamil Nadu Repeal Act 20 of 1999 and by virtue of Section 4 of the Repeal Act, she is entitled to continue in possession of the said land.

4. On direction from this Court, original file was produced before this Court and a written instructions dated 25.7.2006 received from the second respondent, was also produced. Nowhere in the instructions, it is stated that notice was given to the petitioner even though the proceedings were initiated subsequent to the purchase by the petitioner and the village records have also been reflecting her ownership. It is seen from the written instructions that notice of proceedings right from Section 7 to 11 were given to one Mammen Varghese, a resident of Kottayam in Kerala State and the petitioner was nowhere given any such notice. Even in the chitta and village adangal, which is found in pages 49 and 51 of the original file produced, the name of the petitioner is clearly mentioned as the owner of the said land. Thereafter, they have not verified from the petitioner or issued any such notice to her. It is not made clear either in the original file or in the written instructions given by the second respondent as to why no notice was given to the petitioner.

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5. Apart from attacking the original acquisition proceedings, it was also argued that by virtue of the Act 20 of 1999 repealing the Act 24 of 1978, insofar as the possession had not been taken over by the State Government or by any person duly authorised by the State Government, it continues to vest with the land owner. Therefore, it is necessary to refer to Sections 3 and 4 of the Repeal Act (Tamil Nadu Act 20 of 1999).

> "3. Savings:- (1) The repeal of the principal Act shall not effect--
>
> (a) the vesting of any vacant land under sub-section (3) of section 11, possession of which has been taken over by the State Government and any person duly authorised by the State Government in this behalf or by the competent authority;
>
> (b) The validity of any order granting exemption under sub-section 1 of section 21 or any action taken thereunder.
>
> (2) Where--
>
> (a) any land is deemed to have vested in the State Government under section (3) of section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority; and
>
> (b) any amount has been paid by the State Government with respect to such land,
>
> then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.
>
> 4. Abatement of legal proceedings:- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or any authority shall abate:
>
> Provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

6. Mr. V. Ramesh, learned counsel appearing for the petitioner, contended that the entire exercise done by the respondents in declaring the land as surplus urban land and also the so-called take over of possession was a fraud on the safeguards provided under the Act. He submitted that no notice was served on the petitioner or on the vendor of the petitioner's property, viz., Tmt. U. Lakshmi.

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7. The records produced by the learned Assistant Government Pleader was perused. It is seen from the records that the notice under Section 7(2) of the Act 24 of 1978 was sent to one Mammen Varghese at Kottayam on 14.01.1992. When the patta was procured by the respondents, it clearly shows that the land in Survey No. 56/16B is shown to be owned by one Susan Varghese. Even the village adangal only showed the name of Mammy Varghese having a house in that property. With regard to the extent of the land on the survey number, a statement was prepared under Section 9(1) showing the land's total measurement as 3350 Sq. Metres and the excess of land was identified as 1850 Sq. Metres and this was sent again to Mammen Varghese at Kottayam. The chitta extract recorded by the respondents, which is found at page 49 of the file, clearly shows that the owners of the land were M/s Mammy Varghese and Susan Varghese. It is also reflected in the adangal extract found at page 51 of the original file. Even thereafter, the petitioner sent the notice under Section 9 of the Act only to Mammen Varghese, who is not the owner of the land.

8. In the final statement prepared in Form III under Rule 8, curiously, it is seen that the names of Mammy Varghese and Susan Varghese originally written as Serial Numbers 2 and 3, were struck off and the respondents themselves declared that excepting 500 Sq. Metres, the balance of 2850 Sq. Metres were surplus land in Survey No. 56/16B-2. After striking out the names of the real land owners, viz., M/s Mammy Varghese and Susan Varghese, notice was issued only to Mammen Varghese. The reasons are not explained for the same. The original file sending the notice along with the final statement was returned with an endorsement refused. But it was addressed to Mammen Varghese at Kottayam. But the said postal cover does not contain the signature of the postman. It was thereafter, Notification under Section 11(1) of Act 24 of 1978 was published once again showing the name of Mammen Varghese and not the real owners.

9. Thereafter, page 79 of the file shows a letter requesting handing over of the excess land. When that was not forthcoming, once again, a reminder letter was sent not to the real owner seeking for handing over the properties. Even the notice under Section 11(5) of the Act was sent to the name of Mammen Varghese, which has come back with the endorsement 'refused' and the endorsement of the postman is not found in the returned postal cover. Thereafter, at page 109 of the file, an endorsement is found that the so-called surplus land was taken over by the Revenue Inspector, Alandur and handed over to the Firka Revenue Inspector. This was intimated by a covering letter dated 11.01.1995 and even in that letter, the name of the owner is shown as Mammen Varghese.

10. The original file produced by the learned Government Pleader completely justifies the allegations made in paragraphs 6, 7 and 9 of the affidavit filed in support of the writ petition. If only the respondents had taken care to serve the real owners of the property, the entire issue would not have come before this Court with these allegations.

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In a way, the petitioner is right in saying that the attempt of the respondents was just to take over the property in the name of some person and make it a fait accompli against the real owner and it is a clear case of deprivation of the property in violation of Article 300-A of the Constitution of India.

11. Further, it is also averred in the affidavit that in view of possession not having been taken over in the manner known to law and the fact that the physical possession and enjoyment is in the hands of the petitioner, she is entitled to get the benefit of Section 4 of the Repeal Act 20 of 1999.

12. In this connection, the learned counsel appearing for the petitioner relied on a judgment of a Division Bench (Presided over by P. Sathasivam, J. as he then was) reported in 2007 (1) MLJ 750 [V. Somasundaram and others v. Secretary to Government, Revenue Department and others]. He particularly relied on paragraph 9 of the judgment, which reads as follows:

Para 9: "From the perusal of the file, it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11 (5) notice was also issued to the third respondent, who was not the real owner. As per Section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days' time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of Section 11(5) of the Act."

[Emphasis added]

13. The learned counsel also drew the attention of this Court to an un-reported decision of the Division Bench, presided by S.J.Mukhopadhaya, J. in W.P. Nos. 693 to 695 of 2003 [Annie Jacob and others v. State of Tamil Nadu and another] and the relevant passage found paragraphs 8 and 9 is extracted below:

Para 9: "There is nothing on the record to suggest that the competent authority issued any notice in writing directing the original land holder or the appellants to surrender or deliver possession of the lands in question. Nothing has been produced to suggest that the original land holder or the appellants refused or failed to comply with such order

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and on failure the possession of the lands were taken by force. In absence of such notice u/s 11(5) or action taken u/s 11(6), a bald statement as made by the respondents that possession was taken on 10th Feb., 1995, cannot be accepted. On the other hand, the appellants have produced documents, such as panchayat tax receipts, reassessment notice, tax acknowledgment and demand notice, pattas, chittas, house tax receipt, panchayat payment receipts, electricity bills / cards, etc., to suggest that they are still in possession of the lands in question.

Para 9: In the aforesaid circumstances, the respondents cannot take advantage of Section 3 of the Repealing Act 20 of 1999 and nor deny the advantage u/s 4 to the appellants. Such provisions being in favour of the appellants, we hold that the total proceeding shall stand abated."

[Emphasis added]

14. The learned counsel further brought to the notice of this Court the judgment in W.P. No. 29081 of 2003 [Sudandarakkani v. Government of Tamil Nadu and others] (rendered by me) and referred to paragraphs 9 and 10, which read as follows:

Para 9: "These records can never be believed as neither the petitioner nor the predecessor-in-title have been served with proper notices in terms of the Act and the Rules made thereunder. When valuable lands are sought to be taken over by a statutory enactment, it is incumbent on the part of the authorities to scrupulously follow the rules prescribed thereunder. The mode of affixture cannot be resorted to as a matter of course and attempt should have been made to send the notice by Registered Post as contemplated under the Rules. If this process is resorted to by the respondents, any land can be taken over without even notice to the land owners by not complying with the mandatory provisions of the Rules. There are also no records to show that physical possession has been taken over from the petitioner, who is the purchaser of the land even as early from 29.8.1986. In any event, there are no records to indicate that physical possession has been taken over from the petitioner and in the absence of the same, the petitioner is entitled to have the benefit of Section 4 of the Repeal Act 20 of 1999.

Para 10: This Court in its judgment reported in (2006) 2 M.L.J. 664 [SOSOMMA THAMPY vs. THE ASSISTANT COMMISSIONER (ULT) - CUM - COMPETENT AUTHORITY (ULC)], has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC Act and noting in the file that symbolic possession is taken cannot be accepted as taking of physical possession. This Court is in complete

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agreement with the ratio laid down in the aforesaid decision which also squarely applies to the facts and circumstances of the case."

15. Therefore, insofar as the proceedings were not initiated against the real land owner as found in the original file, the entire exercise by the respondents is an exercise in futility and it would also amount to depriving the property of the petitioner by misusing the power vested under the Tamil Nadu Act 24 of 1978.

16. In view of the above, the writ petition stands allowed and impugned order dated 01.6.1993 passed by the second respondent and the notice under Section 9(5) of Act 24 of 1978 dated 30.6.1994 will stand set aside. The petitioner is entitled to have the benefit of Section 4 of the Tamil Nadu Act 20 of 1999 and be in absolute enjoyment and possession of the property measuring 44 cents. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

17. The third respondent Tahsildar, Tambaram and the Sub-Registrar, Adyar are directed to make appropriate notings in the connected records.

Gri

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Commissioner and
   Commissioner of Land Reforms
   Chepauk, Chennai - 5

2. The Assistant Commissioner
   Urban Land Ceiling
   Alandur, Chennai-600 088

3. The Tahsildar
   Tambaram Taluk
   Tambaram, Chennai

4. The Sub-Registrar
   Adyar, Chennai

+1 cc to Mr.V.Ramesh, Advocate Sr.No.72915.

KS(CO)
DCP/12.12

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